THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.26749 of 1999

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Date: 07.02.2006

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Between:

B.Satyanaryana.

.. **PETITIONER**

AND

The Tirumala Tirupathi Devasthanams,

Tirupathi and another.

.. RESPONDENTS

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ORDER:

Questioning the action of the first respondent in not regularizing the services of the petitioner, in terms of G.O.Ms.No.391, dated 06-05-1991, as arbitrary, discriminatory and contrary to law, the present writ petition is filed and a consequential direction is sought to the first respondent to regularize his services in the cadre of Watchman in TTD service with effect from 01-08-1991 as has been done in respect of similarly situated employees.

Facts, to the limited extent necessary for this writ petition, are that the petitioner was initially appointed on 15-11-1986 to work as a casual watchman at the T.T.D. Kalyanamandapam at Machiryal in Adilabad District. His services, as a casual watchman, were discontinued with effect from 13-09-1988. The petitioner filed

W.P.No.5975 of 1989 questioning his termination from service and this court, by order dated 30-11-1990, held that since the question as to whether the petitioner was appointed for construction work till it was inaugurated or not, whether he was appointed for a specific purpose i.e., till the construction work was over, etc., were disputed questions of fact, the petitioner was not entitled for any relief under Article 226 of the Constitution of India and that his remedy was only to claim compensation under Section 25-FF of the Industrial Disputes Act (for short "the Act").

The petitioner filed an application under Section 2-A(2) of the Act before the Industrial Tribunal-cum-Labour Court, Godavarikhani, in I.D.No.172 of 1992 and the Tribunal passed an award on 09-12-1994 as under:-

> "a) Award shall come into force after thirty (30) days of the publication of the 'Notification' issued by the Government.
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> b) Within thirty (30) days of its publication, the petitioner should approach the respondent with a request to issue "order of appointment and posting" and payment of the salary for the period referred to above.
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> Note:- The request should be made in writing and the letter be sent in Regd. Post Ack. Due manner only and in no other manner.
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> c) If the i.e., the petitioner does not act and does not approach the respondent in time and in the manner as stated above, the petition shall be deemed to have been dismissed and be need not be appointed.
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> d) the petitioner would be entitled to his salary and attendant benefits from the date of his actually reporting for duty, subsequent to the receipt of "order of appointment and posting."

Aggrieved thereby, the first respondent filed W.P.No.16433 of 1995. This court, on taking note of the fact that the first respondent had chosen to remain ex-parte and had not participated in the proceedings before the Tribunal and since the statement of the petitioner before the Tribunal that he had worked for 240 days, remained un-

controverted, held that the award of the Tribunal directing that the petitioner be appointed as a casual labourer did not call for interference.

Subsequent to the order of this court, in W.P.No.16433 of 1995, dated 25-01-2006, the petitioner herein filed W.P.No.1780 of 2006 questioning the award of the Tribunal in I.D.No.172 of 1992. The said writ petition was dismissed as withdrawn by this court on 31-01-2006. As such, atleast insofar as the petitioner herein is concerned, the award of the Tribunal in I.D.No.172 of 1992 has attained finality.

Sri V.Jagapathi, learned counsel for the petitioner, would refer to G.O.Ms.No.390, dated 06-05-1991, where under the services of 1515 i.e., 1351 casual labourers and 164 S.C. and S.T. employees were regularized, consequent upon 1515 posts being sanctioned by the Government for regularization of such NMRs/Casual Labour/ Consolidated Pay/Daily wage employees, who were appointed during the period 01-04-1984 to 31-03-1988 in the regular establishment of the TTD. Learned counsel would contend that while employees, who had worked during the said period from 01-04-1984 to 31-03-1988, were regularized, since the petitioner, on the date on which proposal was submitted by the TTD to the Government on 04-05-1990, was not in service, consequent upon his being dis-continued from service with effect from 03-09-1988, he was denied the benefit of regularization under G.O.Ms.No.390, dated 16-05-1991, though he satisfied all the requirements for being conferred the benefit of regularization under the said G.O. Learned counsel would also draw attention of this court to a letter addressed by the then Executive Officer, TTD, to the Principal Secretary to Government, Revenue (Endts.III) Department, on 01-08-2000, wherein, while informing the Government that except certain employees, who had completed five years of continuous service as on 25-11-1993, there were only two employees, including the petitioner herein, who were being continued in service based on the orders of the Court/Tribunal. The case of the petitioner is specifically

referred to, in the said letter dated 01-08-2000, as being continued in service as a casual labour basing on the award passed by the Labour Court in I.D.No.172 of 1992. The said letter also records the fact that these two persons, including the petitioner, come under the category of persons claiming absorption under G.O.Ms.No.390/391, dated 06-05-1991.

Sri V.Jagapathi, learned counsel for the petitioner, would contend that pursuant to the award of the Tribunal, in I.D.No.172 of 1992, the petitioner was taken into the services of the TTD and pursuant to the interim orders, in the present writ petition, he was given the benefit of minimum scale of pay with effect from 02-09-2004. The petitioner, pursuant to the award of the Tribunal, has therefore continued in the service of TTD from 25-06-1997 onwards, for the past more than eight years.

Sri A.K.Jaya Prakash Rao, learned counsel for the respondents, would submit that the Tribunal did not direct reinstatement of the petitioner into service and had merely directed that he shall be appointed as a casual labourer. Learned counsel would contend that only in cases where an employee is reinstated into service would the legal fiction of his being in continuous service apply and since the petitioner was not reinstated but was appointed, pursuant to the award of the Tribunal, on 25-06-1997 as a casual labourer he can neither claim the benefit of his past service nor for the benefit of regularization under G.O.Ms.No.390, dated 06-05-1991. Learned counsel would submit that in view of the ban on recruitment, pursuant to Act 2 of 1994 and since the petitioner cannot be held to have satisfied the requirement of G.O.Ms.No.212, as he did not put in the minimum required five years of service as on 25-11-1993, the petitioner is not entitled to claim regularization of his services.

A perusal of G.O.Ms.No.390, dated 06-05-1991, would make it clear that all those employees, who were engaged as NMRs/Casual Labour/Consolidated Pay/ Daily wages etc., during the period from 01-04-1984 to 31-03-1988 were regularized

in the service of TTD. It is also not in dispute that the petitioner was initially appointed as a casual watchman on 15-11-1986 and continued to serve the TTD till his services were dis-continued with effect from 13-09-1988. Since the petitioner was also among those employees, who served the TTD as casual labour during 01-04-1984 to 31-03-1988, he would fall within the category of employees, who were given the benefit of regularization under G.O.Ms.No.390, dated 06-05-1991. The fact, however, remains that despite others, similarly situated to the petitioner and who had worked during the period 01-04-1984 to 31-03-1988, being regularized in service, the petitioner was not regularized nor was sanction accorded by the government for creation of a post to regularize his services. The award of the Tribunal does not also confer on him the benefit of deeming provision in Section 25-F of the Industrial Disputes Act, where on reinstatement being directed, an employee is deemed to be in continuous service of the employer with effect from the date of his termination itself.

Sri V.Jagapathi, learned counsel for the petitioner, while not disputing the fact that the power to create a post lies with the government, would submit that since there was a ban of recruitment, pursuant to Act 2 of 1994, none of the vacancies, which had arisen consequent upon retirement, resignation, death of employees in class-IV posts have been filled up and that there are several unfilled vacancies now available in these sanctioned posts.

The award of the Tribunal mandates the TTD to appoint the petitioner as a casual labourer and, in fact, the first respondent has so appointed him with effect from 25-06-1997. It is well settled that no person can be continued as a casual labour indefinitely and since the petitioner, under the award of the Tribunal which has now been upheld by this court, was in service for more than eight years, the 1st respondent is required to consider his case in the available vacancies, more so,

since persons similarly situated to him have been regularized under G.O.Ms.No.390, dated 06-05-1991.

Sri V.Jagapathi, learned counsel for the petitioner, would submit that the petitioner is willing to forego arrears of salary prior to the date of his regularization, if the TTD regularises his services in the available vacancies.

Sri A.K.Jayaprakash Rao, learned counsel for the respondents, would however submit that he has no instructions as to whether there are any available vacancies in which the petitioner's case could be considered for regularization in terms of G.O.Ms.No.390, dated 16-05-1991.

Recording the submission of Sri V.Jagapathi that the petitioner would forego arrears of salary/wages, I consider it appropriate, in the peculiar facts and circumstances of this case, to direct the respondents to consider the case of the petitioner for regularization in the vacancies, which are either available or which may arise in the near future. Needless to state that the petitioner shall be entitled for regular scales of pay in the regular post only from the date of his regularization and not prior thereto. Till this exercise is completed by the respondents, the petitioner shall be continued in service as a casual labourer in terms of the award of the Tribunal in I.D.No.172 of 1992, dated 09-12-1994. The interim order passed by this court, directing that he shall be paid the minimum in the time scale of pay applicable to the post of watchman, shall also continue till then.

The writ petition is accordingly disposed of. No order as to costs.

07-02-2006

Prv